

COURT GRANTS PRELIMINARY INJUNCTION IN FAVOR OF AMERICAN HEALTH CARE ASSOCIATION'S COMPLAINT AGAINST CMS FOR ARBITRATION PROVISION CHANGES CONTAINED IN NEW REGULATIONS

This is another article in a series discussing the complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities ("Final Regulations") by the Centers for Medicare & Medicaid Services ("CMS").

BACKGROUND

On September 28, 2016, CMS released a complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities. CMS's Final Regulations cover many regulatory requirements for long-term care facilities and create new compliance obligations for providers. The Final Regulations seek to target rehospitalizations, facility-acquired infections, overall quality and resident safety.

Recently, Hall Render published an [overview](#) of Final Regulations components as well as Parts 1, 2, 3 and 4 in the series, which are located [here](#), [here](#), [here](#) and [here](#).

BINDING ARBITRATION AGREEMENTS - SEC. 483.70

The Final Regulations provide new requirements for facilities that use binding arbitration agreements in Sec. 483.70. The Final Regulations contained a provision requiring that a facility must not enter into a pre-dispute agreement for binding arbitration with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission to the facility.

COURT ISSUES ORDER GRANTING AHCA A PRELIMINARY INJUNCTION AGAINST CMS

Today, the U.S. District Court for the Northern District of Mississippi granted a preliminary injunction in favor of the American Health Care Association ("AHCA") in AHCA's case against CMS.

AHCA's complaint asserted that the arbitration ban violates the Federal Arbitration Act and exceeded CMS's statutory authority under the Medicare and Medicaid Acts. The complaint further asserted that the ban is arbitrary and capricious—and thus unlawful—because it will needlessly deprive both facilities and their residents of the benefits of arbitration and result in the siphoning of resources toward litigation costs and away from resident care.

The U.S. District Court for the Northern District of Mississippi held a hearing on December 3, 2016. Judge Michael P. Mills wrote the opinion. Judge Mills wrote that it is likely that CMS will have presented insufficient justification for banning nursing home arbitration in this case. Judge Mills recognized that the ban is based on sound public policy, as a fundamental problem affecting nursing home arbitration is the mental competency of the resident signing the admission contract. Judge Mills stated that that the balance of harms and the public interest supported holding the enactment of the ban on arbitration provisions in abeyance until the doubts regarding its legality can be definitively resolved by the courts.

PRACTICAL TAKEAWAYS

The preliminary injunction stops the November 28, 2016 implementation of the provision in the Final Regulations that prohibit the use of pre-dispute binding arbitration agreements.

A copy of the court's decision can be found [here](#).

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